

Appln. No. 09/506,434
Response dated May 20, 2004
Response to Communication mailed on April 20, 2004

REMARKS

Applicants hereby file this Response to the Communication mailed on April 20, 2004 ("Communication") requesting Applicants to submit claim amendments that conform to the "Revised Amendment Practice Final Rule Effective July 30, 2003" to replace the listing of claim amendments in the Amendment after Final Rejection that was originally filed on January 7, 2003; re-filed on March 11, 2003; and entered pursuant to the Request for Continued Examination filed on June 11, 2003. The Examiner has stated in the Communication that claims 1-4, 6-13, 15-19, 21-24, 27, 28 and 30-59 are pending. Applicants respectfully disagree with this list of pending claims, and believe that a background of the prosecution of this application will clarify the status of the claims.

BACKGROUND

Applicants filed this application on February 18, 2000 with original claims 1-29. On January 23, 2001, Applicants filed a Petition to Make Special along with a Preliminary Amendment in which claims 1-24 and 27-29 were amended, and claims 25 and 26 were canceled. In an Office Action mailed on July 31, 2001 (Paper No. 10), the former Examiner for this application, Examiner Bergin, issued a restriction requirement along with claim rejections. On December 31, 2001, Applicants filed an Amendment and Response to Paper No. 10 in which claims 5, 14, 20 and 29 were canceled; claims 1, 15 and 21 were amended; and new claims 30-49 were added. Also, Applicants provisionally elected claims 1, 4, 10, 11, 13, 15, 17 and 21 for prosecution, holding in abeyance under 37 C.F.R. § 1.142(b) claims 2-3, 6-9, 12, 16, 18-19, 22-24 and 27-28.

In a Final Rejection mailed on September 11, 2002 (Paper No. 18), Examiner Bergin withdrew claims 30-49 from consideration as being directed to a non-elected species of the invention under 37 C.F.R. § 1.142(b) and MPEP § 821.03. Applicants then submitted an Amendment after Final Rejection on January 7, 2003 in which claims 1, 15 and 21 were amended and new claims 50-59 were added. This Amendment after Final Rejection was not received by the Examiner, and Applicants re-submitted the Amendment after Final Rejection in addition to a Notice of Appeal on March 11, 2003. Applicants were notified that the March 11, 2003 submissions (both the Amendment after Final Rejection originally filed on January 7, 2003 and the Notice of Appeal) had not been received by the Examiner. On May 22, 2003, Applicants

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resubmitted the Notice of Appeal and the Amendment after Final Rejection to Supervisor Vincent Millin. On May 30, 2003, Examiner Bergin mailed an Advisory Action (Paper No. 25) notifying Applicants that the Notice of Appeal had been received, and that the Amendment after Final Rejection would not be entered. Accordingly, as of May 30, 2003, the amendments of claims 1, 15 and 21 and new claims 50-59 in the Amendment after Final Rejection had not been entered. Applicants then filed a Request for Continued Examination ("RCE") on June 11, 2003 requesting that the Amendment after Final Rejection be entered. It is Applicants' understanding that the Amendment after Final Rejection, with its claim amendments and addition of new claims, was not entered until the filing of this RCE on June 11, 2003.

Applicants then received a Notice of Abandonment (Paper No. 27) that was mailed on October 1, 2003 notifying that the application was abandoned due to an alleged failure to file a proper reply to the Office Action mailed on September 11, 2002. Applicants petitioned to have the abandonment withdrawn on November 6, 2003, which petition was granted on January 8, 2004 (Paper No. 28).

The recent Communication indicates that claims 1-4, 6-13, 15-19, 21-24, 27, 28 and 30-59 are pending. However, Applicants have set forth the history of the application to show that the pending claims as of the filing of the RCE on June 11, 2003 should be claims 1, 4, 10, 11, 13, 15, 17 and 21, and newly added claims 50-59. Further, the Communication indicates that Applicants' Amendment dated March 11, 2003 does not comply with the "Revised Amendment Practice Final Rule Effective July 30, 2003." However, Applicants respectfully submit that the listing of claims that the Examiner has requested be conformed to comply with the rules that became effective July 30, 2003 are those claim amendments made originally in the January 7, 2003 Amendment after Final Rejection, which were not entered until the RCE was filed on June 11, 2003.

Additionally, the Communication indicates that the Amendment after Final Rejection which was originally filed on January 7, 2003 and resubmitted on March 11, 2003 has now been entered as Paper No. 23. Applicants respectfully submit that the Advisory Action dated May 30, 2003 expressly stated that the Amendment after Final Rejection had not been entered, and therefore request clarification that the Amendment after Final Rejection was not entered until June 11, 2003 pursuant to the RCE.

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CONCLUSION

Based on this background, Applicants respectfully submit that claims 1, 4, 10, 11, 13, 15, 17 and 21, and newly added claims 50-59 are pending in the application, and that the Amendment after Final Rejection was not entered until June 11, 2003 pursuant to the Request for Continued Examination. Further, Applicants respectfully submit that all pending claims are in condition for allowance and request allowance of the same.

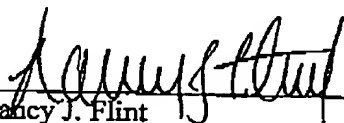
Applicants believe that no fee is due upon the filing of this Response to the Communication. If any fees are found to be due, the Commissioner is hereby authorized to deduct such fees from the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

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